THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Appeal #2017-002564

Martha "Linda" Lusk, Ph.D.……Appellant

v.

Jamie L. Verderosa..……..……Respondent

PETITION FOR WRIT OF CERTIORARI

I. CERTIFICATION OF COUNSEL

The undersigned hereby affirms that Petitioner filed a Petition for Rehearing and the same was denied by the Court of Appeals on or about August 24, 2020.

II. QUESTIONS PRESENTED FOR REVIEW

A. Did the Court of Appeals err by finding that "Based on our review of the record, we find Lusk's own actions precipitated the District's decision to place her on administrative leave for the remaining two months of the 2012-2013 school year … ." (**Opinion, p. 7**)

B. Did the Circuit Court and the Court of Appeals misapprehend the reading of the last sentence of S.C. Code Ann. §59–24–15 to provide virtually no protections at all for administrators with definite term, non-employment at will contracts by ruling Administrators could not only be non-renewed for their position and salary at the end of

the contract year without a full, adversarial hearing as provided in S.C. Code Ann. §59–25–460 of the Teacher Act, but they could also be demoted and their salary slashed *mid*-contract for *any* reason or *no reason at all*?

III. STATEMENT OF THE CASE

A. MATERIAL FACTS

Appellant is currently employed by the Oconee County School District as an adult education teacher at Code Academy. Appellant has been employed by the Oconee County School District ("OCSD") for over 30 years. Appellant is a Ph.D., having earned her Bachelor's Degree from Furman University and her doctorate degree for the University of South Carolina in 1982. Appellant was also named "Teacher of the Year" numerous times. (**R. pp. 12-13 ¶¶5-9, 81, 90-91**).

For many years, the Appellant was an Assistant Principal at West Oak Middle School (WOMS) in the Oconee County School District (OCSD). Starting in the 2009-2010 school year, the Respondent became the Principal at WOMS, thereby becoming the Appellant's direct supervisor. (**R. p. 82**). Appellant had applied for the position as Principal at WOMS, but the Respondent was selected as Principal instead.

Beginning in 2012, Respondent then began an intentional campaign to attack the honesty, integrity, virtue, or reputation of Appellant in an effort to "run her off" by getting Appellant to quit or retire. **(R. pp. 147, 168-171, 174-175).** Respondent first placed a disciplinary letter in Appellant's personnel file in March 2012. This letter alleged a complaint was made to the OCSD by a parent of a student and concerned the Appellant. In particular, Respondent alleged the parent complained that the Appellant had made comments to the student implying that the student was a "criminal." The letter from Respondent was placed in Appellant's permanent personnel file at the

OCSD and instructed Appellant to "be careful" as to how she addressed students in the future. (**R. pp. 99-100, 110-111**).

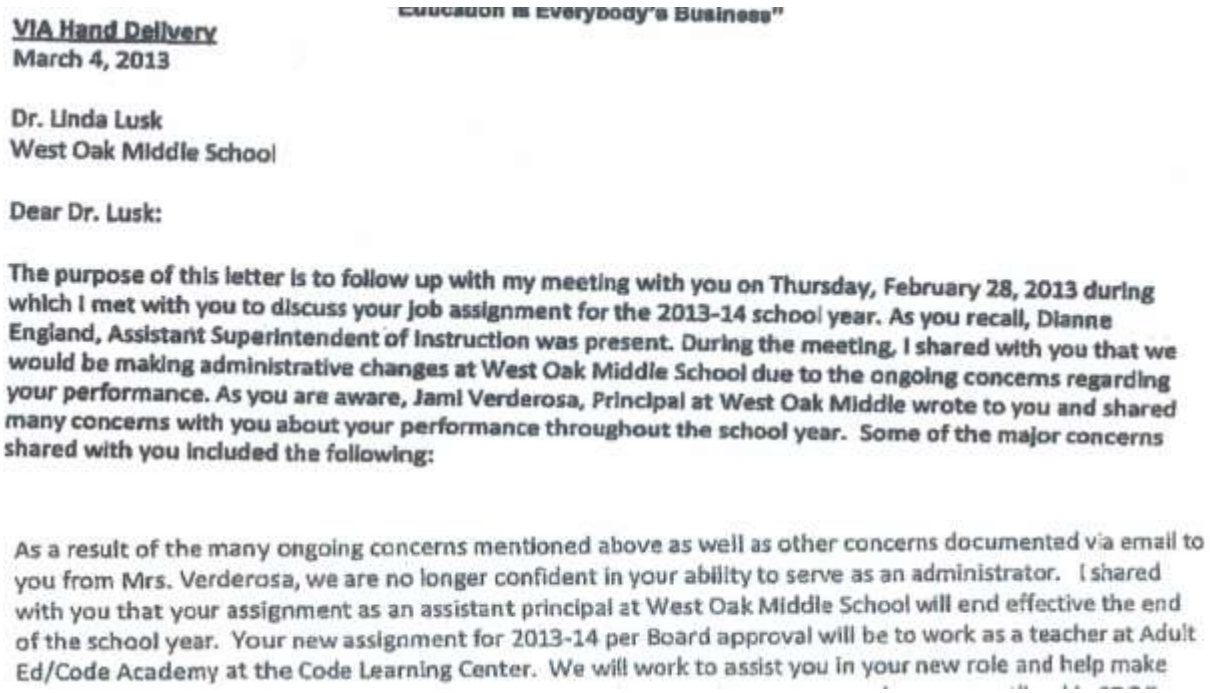
Appellant then filed a grievance with the OCSD regarding the disciplinary letter from Respondent. The Assistant Superintendent (who is now the Superintendent) reviewed the Appellant's grievance and found that the letter that the Respondent had placed in the Appellant's personnel file was not "disciplinary," but, rather, was a "reminder" for the Appellant to use her words more carefully when disciplining students. (**R. p. 25**). Of course, no explanation was ever given as to why Respondent had the letter placed in Appellant's permanent personnel file if it was not "disciplinary." But, even more telling was that on March 4, 2013, this "non-disciplinary" letter was used as the first one on the "list" of "concerns" that Respondent had trumped up against Appellant to cause her demotion and transfer by the OCSD and was cited again by the Superintendent in support of his reasons for later demoting Appellant and reassigning her to Code Academy. (**R. pp. 99-101, 110-111)**

Respondent's campaign of tortious interference included defaming Appellant in her profession by stating to third parties (who were other teachers that were NOT privileged communications) that Dr. Lusk "didn't know what she was doing in her job", that she "couldn't have been capable of even preparing her own PowerPoint presentation," and that she "failed to attend a meeting" that she clearly attended. **(R. pp. 92-94, 99-101**)

This smear campaign first culminated in a meeting on or about February 25, 2013, wherein Respondent made numerous defamatory statements about Appellant to Ernestine Williams, OCSD's Personnel Director, which besmirched and attacked the honesty, integrity, virtue, or reputation of Appellant and exposed Appellant to disgrace and ridicule. In addition to the defamation, Respondent then began a campaign of overloading Appellant with additional duties

and then instructing Appellant to perform conflicting duties. **(R. pp. 149, 168-171, 174-175)** If Respondent then perceived *any* failures by Appellant, she would immediately report the same to the Personnel Office of the OCSD in furtherance of her efforts to tortiously interfere with Appellant's position and employment as an administrator at OCSD. Prior to this tortious and defamatory campaign by Respondent, Appellant had a ***spotless*** disciplinary record during her over three decades of service to the OCSD. (**R. pp. 9-14**)

As was Respondent's goal, as a result of the emotional distress Appellant was enduring at the hands and words of Respondent, Respondent succeeded on March 4, 2013, in having Appellant demoted from an Assistant Principal to an adult education teacher for the following school year. (**R. pp. 99-101**) Specifically, the OCSD stated in its letter:



"Education is Everybody's Business"

VIA Hand Delivery
March 4, 2013

Dr. Linda Lusk
West Oak Middle School

Dear Dr. Lusk:

The purpose of this letter is to follow up with my meeting with you on Thursday, February 28, 2013 during which I met with you to discuss your job assignment for the 2013-14 school year. As you recall, Dianne England, Assistant Superintendent of Instruction was present. During the meeting, I shared with you that we would be making administrative changes at West Oak Middle School due to the ongoing concerns regarding your performance. As you are aware, Jami Verderosa, Principal at West Oak Middle wrote to you and shared many concerns with you about your performance throughout the school year. Some of the major concerns shared with you included the following:

As a result of the many ongoing concerns mentioned above as well as other concerns documented via email to you from Mrs. Verderosa, we are no longer confident in your ability to serve as an administrator. I shared with you that your assignment as an assistant principal at West Oak Middle School will end effective the end of the school year. Your new assignment for 2013-14 per Board approval will be to work as a teacher at Adult Ed/Code Academy at the Code Learning Center. We will work to assist you in your new role and help make

But that wasn't enough for Respondent. Respondent didn't rest until she saw Appellant removed as an Administrator and placed on immediate Administrative Leave at Respondent's instigation on April 26, 2013, for the remainder of AY 2012-2013. (**R. pp. 102-103**) The "cause" of the Administrative Leave was allegedly that Appellant accidently sent an e-mail to the wrong e-mail

recipients and the email contained information about Appellant's employment issues with Respondent. However, Respondent **also** had an incident where she (Respondent Jamie Verderosa) sent a confidential email to the wrong recipient. Yet, Verderosa *received NO disciplinary action whatsoever for the same offense* (**R. pp. 209-210**). However, with Dr. Lusk's error, Respondent immediately ran to OCSD to "tattle" on Appellant and report the mistake to OCSD's personnel department, which resulted in Appellant being removed as an Administrator, placed on an immediate Administrative Leave for the rest of the contract year, and *prohibited from even stepping foot on the WOMS campus again*. (**R. pp. 102-103**) – an unnecessarily harsh and disparate punishment for a woman who had worked for OCSD for three decades and had a *spotless* disciplinary record before Verderosa's arrival. As far as AY 2013-2014, Appellant had already demoted to a teacher and had different duties at a different school (as a result of the March 4, 2013 demotion). (**R. pp. 99-101)** Beginning AY 2014-2015, Appellant's salary was further reduced from approximately $96,000.00 per year to $74,000.00 per year and for all years forward. (**R. pp. 96, 102-103**).

As a result, Appellant brought suit against Respondent.

B. PROCEDURAL BACKGROUND

Appellant filed this complaint on February 24, 2016, for two causes of action – Slander *per se* and Tortious Interference with Contract. (**R. pp. 9-14**) On March 24, 2017, Respondent filed a Motion for Summary Judgment. (**R. pp. 21-80**) After several reschedules due to conflicts by the local judges involving the OCSD, the Honorable R. Lawton McIntosh heard this matter on November 1, 2017, and granted Summary Judgment on all Plaintiff's claims. (**R. pp. 1-6**) Appellant received the Order Granting Summary Judgment on November 6, 2017. This appeal timely followed. On July 8, 2020, Appellant received the Court of Appeals' opinion in *Lusk v.*

Verderosa, Op. No. 5741 (S.C. Ct. App. filed July 8, 2020). She thereafter timely filed a Motion or Reconsideration. On August 24, 2020, she received the denial of her Motion for Reconsideration and now timely files this Petition for Certiorari.

IV. ARGUMENT

A. THE COURT OF APPEALS ERRED BY FINDING THAT "BASED ON OUR REVIEW OF THE RECORD, WE FIND LUSK'S OWN ACTIONS PRECIPITATED THE DISTRICT'S DECISION TO PLACE HER ON ADMINISTRATIVE LEAVE FOR THE REMAINING TWO MONTHS OF THE 2012-2013 SCHOOL YEAR … ." (Opinion, p. 7)

Much like the Circuit Court below, the Court of Appeals in "find[ing] Lusk's own actions precipitated the District's decision to place her on administrative leave for the remaining two months of the 2012-2013 school year" rather than Verderosa's discriminatory and disparate treatment, wrongly decided an issue that should have been a fact presented to and decided by a jury. A jury could have reasonably found that an email mistakenly sent in March to the wrong party by Dr. Lusk was not the real reason that Dr. Lusk was immediately removed as an Administrator, placed on administrative leave for the rest of the academic year, and *prohibited from ever stepping foot on the WOMS campus again* (**R. pp. 102-103**) because Verderosa also mis-sent a confidential email to the wrong recipient, *and received NO disciplinary action whatsoever for it*, let alone the Draconian and harsh punishment doled out to Dr. Lusk, a 30 year employee of the District with a *spotless* disciplinary record until Respondent Verderosa came along (**R. pp. 209-210**).

The Court of Appeals was required to apply the same standard when reviewing the granting of the summary judgment motion that governs the trial court under Rule 56(c), As such, summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C.

531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party - Appellant. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. (abrogating *Shelton v. LS K, Inc.*, 374 S.C. 294, 648 S.E.2d 307; *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495. *Hancock v. Mid-South. Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).)

As such, the Court of Appeals' finding that Dr. "Lusk's own actions precipitated the District's decision to place her on administrative leave for the remaining two months of the 2012-2013 school year" rather than Verderosa's discriminatory and disparate treatment, wrongly decided an issue that should have been a fact presented to and decided by a jury. As such, the finding should be overturned and the matter remanded to the Circuit Court for a trial.

B. THE CIRCUIT COURT AND THE COURT OF APPEALS MISAPPREHENDED THE LAW AND S.C. CODE ANN. §59–24–15 TO PROVIDE VIRTUALLY NO PROTECTIONS AT ALL FOR ADMINISTRATORS WITH DEFINITE TERM, NON-EMPLOYMENT AT WILL CONTRACTS BY RULING ADMINISTRATORS COULD NOT ONLY BE NON-RENEWED AT THE END OF THEIR CURRENT CONTRACT YEAR WITHOUT A FULL, ADVERSARIAL HEARING AS PROVIDED BY S.C. CODE ANN. §59–25–460 OF THE TEACHER ACT, BUT ALSO THEY COULD BE REMOVED, DEMOTED AND/OR THEIR SALARY SLASHED *MID*-CONTRACT YEAR FOR *ANY* REASON OR *NO REASON* AT ALL.

This is an issue of first impression for this Court. The sparse three cases that discuss the impact of S.C. Code Ann. §59–24–15 since its passage in 1998, all stem from the same case -

Henry-Davenport v. School District of Fairfield County.[1] Respondent would like for the *Henry-Davenport* case to conclusively decide that Appellant had no contractual right to her employment for the duration of her AY 2012-2013 contract so Verderosa can escape liability for her tortious acts of inciting the District to place Dr. Lusk on administrative leave for the remaining two months of the 2012-2013 school year for a simple "mistake" that she also made which did not rise to a level warranting that response. However, the cases cited in *Henry-Davenport* (and the *Henry-Davenport* case itself) were all about non-renewals of Administrators' *next* year's contracts, not issues involving their *current* year contracts.

Unlike the contract at issue in *Cape v. Greenville Cnty. Sch. Dist.*, 365 S.C. 316, 319, 618 S.E.2d 881, 883 (2005), Appellant's 2012-2013 contract had no terminable at-will provisions. Rather, its assignment change language required:

> The Board agrees to employ the Employee in a professional position for **215** days during the 2012-2013 school year, which includes 10 days of Inservice training. The Employee's assignment for the 2012-2013 contract term is **Assistant Principal - Instruction, (1.00) WEST OAK MIDDLE SCHOOL** however, it is understood that all assignments are tentative and may be changed by the administration upon notice to and consultation with the Employee in accordance with Board policy.

There was no "consultation" with Appellant before she was removed from her position, placed on Administrative Leave and *prohibited from stepping foot on the WOMS campus ever again*. (**R. pp. 102-103**) Further, the salary change/reduction language in Appellant's contract stated:

> The District agrees to pay the Employee according to the salary schedule adopted by the Board. This salary schedule will be made available as soon as practicable. Loss or reduction in any amount of anticipated or appropriated state, local or federal funding may, at the discretion of the District, require a pro-rata reduction of salary; a reduction in the term of this contract and pro-rata reduction in salary, i.e., a furlough consistent with State law; or a termination of this agreement. Furthermore, any decline in student enrollment, elimination or change in course programming, or temporary closing of school or District operations because of emergency circumstances may require a pro-rata reduction in term and/or salary. Any such actions will be based on the recommendation of the Superintendent and must be approved by the Board. Any position eliminations will be handled in accordance with Board Policy GBKA (Reduction in Force).

[1] The original Federal court case - 832 F.Supp.2d 602 (D.S.C. June 03, 2011); The certified question to the S.C. Supreme Court - 391 S.C. 85, 705 S.E.2d 26 (2011); The appellate decision of the 4th Circuit Court of Appeals - 498 Fed.Appx. 193 (4th Cir. 2012)

None of these conditions were present in Appellant's case either.

In the Supreme Court's response to the Certified Question in *Henry-Davenport v. Sch. Dist. of Fairfield Cty.*, 391 S.C. 85, 705 S.E.2d 26 (2011), both of the cases discussed prior to the enactment of S.C. Code Ann. §59–24–15, involved "non-renewals" or demotions for the *next year's* contract. Specifically, the Court discussed the distinguishment of the *Johnson* case from the result in *Snipes*, noting that *Snipes* concerned a loss of position, whereas *Johnson* suffered a loss of wages. 391 S.C. at 88, 705 S.E.2d at 27. However, *none* of those cases (including *Henry-Davenport* itself) involved removal from a position *mid*-year, *mid*-contract especially in light of the lack of employment at will language in Appellant's contract.

A contract for a definite term is presumptively terminable only upon just cause unless those presumptions are altered by express contract provisions. *Cunningham v. Anderson Cty.*, 414 S.C. 298, 303, 778 S.E.2d 884, 886 (2015). Respondent has never argued that the "mistaken email" was "just cause" (nor could they since Verderosa committed the very same error without *any* repercussions. Under the Circuit Court's and Appellate Court's reading of the *Henry-Davenport* case and S.C. Code Ann. §59–24–15, having a definite term contract for an Administrator's position in South Carolina would essentially be wholly toothless and superfluous. Surely, this reading is not what Legislature intended when writing that "Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract." A more reasonable reading would be that an Administrator is not entitled to continue year to year as an Administrator, but, rather, only as a teacher. However, for the year that the Administrator's contract is actually in place, they are entitled to such until the end of that contract year, unless the contract is terminable at-will.

As such, the Court's finding that Lusk "failed to prove the first element of

a cause of action for tortious interference with contract—the existence of a valid contract guaranteeing her a right to the position and salary of an administrator" (**Opinion, p. 7**) until the end of AY 2012-2013 should be reversed and this matter remanded to the Circuit Court for a jury trial by a jury of Appellant's peers.

V. CONCLUSION

Accordingly, Appellant Dr. Lusk requests this Court grant this Petition for Writ of Certiorari, permit oral argument, reverse the Circuit Court judge's ruling that Verderosa be granted Summary Judgment on Dr. Lusk's tortious interference with contract claim, and/or remand this matter to the Circuit Court with instructions that it proceed to a jury trial on Appellant's Tortious Interference with Contract claim.

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Dated: September 24, 2020 **ATTORNEY FOR PLAINTIFF**